

**ALL PROCESS, PLEADINGS and ORDERS
PREVIOUSLY SERVED UPON DEFENDANT
AND DEFENDANT'S ANSWER
IN
CAUSE NO. 342-334428-22
Maria Rosario Powdrill
vs.
*RaceTrac Petroleum, Inc.***

**IN THE 342ND DISTRICT COURT
OF TARRANT COUNTY, TEXAS**



- A. Civil Docket Sheet from Tarrant County District Clerk for Cause No. 342-334428-22
- B. Plaintiff's Original Petition filed July 1, 2022
- C. Return of Service of Citation on Defendant
- D. Defendant's Original Answer filed July 28, 2022
- E. Defendant's Jury Demand filed July 28, 2022
- F. Defendant's First Amended Answer filed August 3, 2022

EXHIBIT A



Tarrant County District Clerk Online

Thomas A. Wilder, District Clerk

Civil Case and Transaction Information

08/03/2022 3:06 PM

Court : 342 v Case : 334428

Search

New Search

☐ Show Service Documents ONLY







Cause Number : 342-334428-22

Date Filed : 07-01-2022

MARIA ROSARIO POWDRILL | VS | RACETRAC PETROLEUM INC.

Cause of Action : INJURY OR DAMAGE, OTHER INJURY OR DAMAGE

Case Status : PENDING

File Mark	Description	Assessed Fee	Credit/Paid Fee
07-01-2022	<u>PLTF'S ORIG PET, RULE 193.7 NOT & REQ FOR REQUIRED DISCLS & PROD</u>		N
			\$350.00
07-01-2022	<u>PAYMENT RECEIVED trans #1</u>		Y
			\$213.00
07-01-2022	<u>PAYMENT PAID TO STATE trans #1</u>		Y
			\$137.00
07-01-2022	<u>SVC REQ FORM EMAIL (ATTACHED)</u>		
			\$0.00
07-01-2022	<u>CIT-ISSUED ON RACETRAC PETROLEUM INC-On 07/05/2022</u>		N Svc
			\$8.00
07-01-2022	<u>PAYMENT RECEIVED trans #5</u>		Y
			\$8.00
07-08-2022	<u>CIT RET SVC DEFN RACETRAC PETROLEUM INC</u>		
			\$0.00
07-08-2022	<u>CIT Tr# 5 RET EXEC(RACETRAC PETROLEUM INC) On 07/06/2022</u>		
			\$0.00
07-28-2022	<u>DEFN ORIG ANS</u>		
			\$0.00

07-28-2022	<u>DEFN JURY DEMAND</u>		<u>\$0.00</u>
07-28-2022	<u>JURY REQUESTED</u>		<u>\$0.00</u>
08-03-2022	<u>DEFN 1ST AMD ANS</u>		<u>\$0.00</u>

EXHIBIT B

“Defendant RACETRAC”), is a Domestic Incorporation doing business in Texas. This Defendant may be served with citation by serving its registered agent, **Corporate Creations Network Inc., 5444 Westheimer #1000 Houston, Texas 77056.** *Issuance of citation is requested at this time, and the fee for said issuance has been paid to the Tarrant County District Clerk.*

III. MISNOMER/ALTER EGO

3.1 In the event any parties are misnamed or are not included herein, it is Plaintiff’s contention that such was a “misidentification,” “misnomer,” and/or such parties are/were “alter egos” of parties named herein. Alternatively, Plaintiff contends that any “corporate veils” should be pierced to hold such parties properly included in the interest of justice.

IV. JURISDICTION AND VENUE

4.1 This Court has jurisdiction in this cause since the damages to Plaintiff are within the jurisdictional limits of this Court. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiff hereby states that she is seeking monetary relief of \$250,000.00 but not more than \$1,000,000 including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney’s fees.

4.2 All or a substantial part of the events or omissions giving rise to this cause occurred in Tarrant County, Texas. Therefore, venue is proper pursuant to § 15.002(a)(2) of the Texas Civil Practice & Remedies Code. Additionally, the facts show that the convenience of the parties and witnesses and the interest of justice would be best served in Bastrop County.

V. FACTS

5.1 This suit is brought under and by virtue of the laws of the State of Texas to recover those damages which Plaintiff is justly entitled to receive as compensation for injuries she sustained in a slip-and-fall incident in Tarrant County, Texas on or about **July 13, 2020.**

5.2 On or about July 13, 2020, Plaintiff approached the RaceTrac Gas Station located at 2333 E. Pioneer Parkway Arlington, Texas 76010. Plaintiff noticed that the inside of the store was closed and approached the after-hour window to make her purchase. After retrieving her purchase and attempting to walk away, Plaintiff was tripped by plastic pallets that were obstructing her walkway and not visible. Plaintiff suffered serious bodily injury as a result of this incident.

5.3 The Defendant was aware that the hazard of the plastic pallets existed yet failed to take any corrective action to remove them from the ground.

5.4 The Defendant did not place warning signs or warn members of the public or the Plaintiff of the existence of the palettes.

VI. NEGLIGENCE OF DEFENDANT RACETRAC PETROLEUM INC.

6.1 Plaintiff hereby incorporates all paragraphs of this pleading as if fully set forth herein.

6.2 At the time of the incident, Defendant was the owner or possessor of the premises and owed a duty to exercise reasonable care to prevent injury to others. Defendant breached that duty which proximately caused Plaintiff's injuries and damages. Defendant was negligent in one or more of the following ways:

- a. Failing to properly maintain the property in a safe condition;
- b. Failing to properly light the property to reveal said obstruction an/or hazardous condition;
- c. Failing to train its employees, agents, and/or servants to notify management and/or ownership of any dangerous conditions and/or areas requiring maintenance located on the property;
- d. Failing to enforce a maintenance plan, proper policies, rules, and/or procedures to make its property reasonably safe;
- e. Failing to enforce proper policies, rules, and/or procedures to make its premises reasonably safe;

- f. Failing to warn Plaintiff and other invitees, that the property contained unreasonably dangerous conditions by placing warning signage and or other identification on the property; and
- g. Other acts and/or omissions constituting negligence that will be proved by the evidence at trial.

6.3 Each and all of the above acts and/or omissions constituted negligence and each and all were the proximate cause of the injuries to Plaintiff and the damages alleged herein.

6.4 The acts or omissions of Defendant, constituted negligence, and such negligence was a proximate cause of the occurrence that forms the basis of this lawsuit and Plaintiff's resulting injuries and damages.

VII. DAMAGES

8.1 As a result of the incident made the basis of this lawsuit described in the preceding paragraphs and the negligence of the Defendant, Plaintiff sustained significant injuries and damages in the past and will, in reasonable probability, sustain these damages into the future.

8.2 Defendants' acts and omissions negligently inflicted serious injuries to the Plaintiff.

8.3 Plaintiff respectfully request that the Court determine the amount of Plaintiff's damages and losses that Plaintiffs have incurred in the past and will reasonably incur in the future, as well as the monetary value of these damages, which include, but are not limited to:

- a. Physical pain;
- b. Mental anguish;
- c. Physical impairment;
- d. Medical care expenses;
- e. Out-of-pocket economic losses;
- f. Loss of past earning capacity and/or lost wages;

- g. Loss of enjoyment of life;
- h. Consequential damages; and,
- i. Punitive damages.

8.4 Due to all of the above and foregoing, Plaintiff has suffered actual damages in excess of the minimum jurisdictional limits of the Court for which damages Plaintiff now brings suit.

8.5 Plaintiff seeks both prejudgment and post-judgment interest as allowed by law, all costs of court, and all other relief, both in law and in equity, to which they may be entitled.

VIII. RULE 193.7 NOTICE

9.1 Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives actual notice to Defendant that any document produced by each Defendant may be used against each such Defendant at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

IX. REQUIRED DISCLOSURES AND PRODUCTION

10.1 Pursuant to Texas Rule of Civil Procedure 194 effective January 1, 2021, Defendants must disclose, within thirty (30) days after the filing of the first answer or general appearance, the information or material described in Texas Rules of Civil Procedure 194.2, 194.3, and 194.4. Defendant must serve written responses to these required initial disclosures and production on Plaintiff at the office of Plaintiffs' counsel, within thirty (30) days after the filing of the first answer or general appearance. Failure to respond timely shall constitute an abuse of discovery pursuant to Texas Rule of Civil Procedure 215.

XI. PRAYER

11.1 WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer herein and that, upon final trial and hearing hereof, Plaintiff recovers damages in accordance with the evidence, costs of court herein expended, interest to which Plaintiff is justly entitled under the law, and such other and further relief, both general and special, both in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

THE AMARO LAW FIRM



Anna J. McMullen
SBN: 24109535
2500 E. TC Jester Blvd., Ste. 525
Houston, Texas 77008
713.864.1941 tel.
713.864.1942 fax
fax@amarolawfirm.com

ATTORNEY FOR PLAINTIFF

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Vanessa Garcia on behalf of Anna McMullen
Bar No. 24109535
vanessa@amarolawfirm.com
Envelope ID: 65971032
Status as of 7/1/2022 12:11 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
R. JamesAmaro		fax@amarolawfirm.com	7/1/2022 12:07:16 PM	SENT

EXHIBIT C

CAUSE NUMBER: 342-334428-22

FILED
TARRANT COUNTY
7/8/2022 7:50 AM
THOMAS A. WILDER
DISTRICT CLERK

**MARIA ROSARIO POWDRILL
PLAINTIFF**

VS.

**IN THE 342ND JUDICIAL DISTRICT
COURT OF TARRANT COUNTY, TEXAS**

**RACETRAC PETROLEUM, INC.
DEFENDANT**

RETURN OF SERVICE

My name is **GERARDO ATILANO**. I am over the age of eighteen (18), I am not a party to this case, and have no interest in its outcome. I am in all ways competent to make this affidavit and this affidavit is based on personal knowledge. The facts stated herein are true and correct. My business address is: 1320 QUITMAN ST. STE 100, HOUSTON, HARRIS COUNTY, TX 77009, U.S.A.

ON Tuesday July 05, 2022 AT 12:47 PM - CITATION, PLAINTIFF'S ORIGINAL PETITION, RULE 193.7 NOTICE, AND REQUEST FOR REQUIRED DISCLOSURES AND PRODUCTION came to hand for service upon **RACETRAC PETROLEUM, INC. BY SERVING ITS REGISTERED AGENT CORPORATE CREATIONS NETWORK, INC..**

On Wednesday July 06, 2022 at 12:00 PM - The above named documents were hand delivered to: RACETRAC PETROLEUM, INC. C/O ITS REGISTERED AGENT CORPORATE CREATIONS NETWORK, INC. BY DELIVERING TO MARIA NEWMAN, AUTHORIZED TO ACCEPT@ 5444 WESTHEIMER #1000, HOUSTON, TX 77056, in Person.

FURTHER AFFIANT SAYETH NOT.

STATE OF TEXAS

DECLARATION

"My name is **GERARDO ATILANO**, my date of birth is 07/14/1976 my business address is **1320 QUITMAN STREET, HOUSTON, TX 77009**, and I declare under penalty of perjury that this affidavit is true and correct."

Executed in **Harris County, State of Texas on Thursday July 07, 2022**

/s/GERARDO ATILANO
Declarant

PSC#9589 EXP. 10/31/22
Appointed in accordance with State Statutes

2022.07.665586

EXHIBIT D

342-334428-22

FILED
TARRANT COUNTY
7/28/2022 1:42 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 342-334428-22

MARIA ROSARIO POWDRILL	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
RACETRAC PETROLEUM, INC.	§	
	§	
Defendant	§	342ND JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

TO SAID HONORABLE COURT:

RaceTrac Petroleum, Inc. ("RaceTrac"), the Defendant herein, files this, its Original Answer to Plaintiff's Original Petition, respectfully showing unto the Court as follows:

GENERAL DENIAL

I.

Subject to such stipulations and admissions as may be hereafter made, Defendant hereby enters a general denial, as is permitted by Rule 92 of the Texas Rules of Civil Procedure.

AFFIRMATIVE DEFENSES

II.

Pleading further, Defendant would show that Plaintiff was guilty of certain acts or omissions of negligence, each of which, separately or concurrently, was the sole proximate cause or, alternatively, a proximate cause of the occurrence made the basis of this suit, including but not limited to failing to keep a proper lookout for her own safety.

III.

Pleading further, and in the alternative, Defendant would show that the occurrence made the basis of this suit was the result of an unavoidable accident; that is, one not proximately caused by the negligence of any party to it.

IV.

Pleading further in the alternative, Defendant would show that the act or omission of a separate and independent agency, not reasonably foreseeable, destroyed the causal connection, if any, between the acts or omissions of Defendant and the occurrence in question, and thereby became the immediate cause of such occurrence and the Plaintiff's claimed injuries and damages.

V.

Pleading further, Defendant would show that, pursuant to Texas Civil Practice and Remedies Code § 41.0105, any claim for medical or healthcare expenses allegedly incurred by Plaintiff is limited to the amount actually paid or incurred by or on behalf of Plaintiff.

VI.

Pleading further, Defendant would show that, pursuant to Texas Civil Practice and Remedies Code § 18.091, evidence of alleged loss of earnings, lost wages, lost earning capacity and/or loss of contributions of a pecuniary value, if any, and to the extent such recovery is sought, must be presented by Plaintiff in the form of net loss after reduction for income tax payments or unpaid tax liability to any federal income tax law.

PRAYER

For the above reasons, Defendant prays that upon final hearing judgment be rendered that Plaintiff recover nothing of and from Defendant, and that Defendant recover its costs in this behalf expended; further, that Defendant be granted all such other and further relief to which it may be justly entitled.

Respectfully submitted,

EKVALL & BYRNE, LLP



Michael A. Hummert
State Bar No. 10272000
mhummert@ekvallbyrne.com
Ignacio Barbero
State Bar No. 00796162
ibarbero@ekvallbyrne.com
4450 Sigma Road, Suite 100
Dallas, Texas 75244
Telephone (972) 239-0839
Facsimile (972) 960-9517

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was e-served on counsel of record herein in accordance with the Rules of Civil Procedure on the 28th day of July, 2022.



MICHAEL A. HUMMERT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Donna Wojcik on behalf of Michael A. Hummert

Bar No. 10272000

dwojcik@ekvallbyrne.com

Envelope ID: 66765862

Status as of 7/28/2022 2:21 PM CST

Associated Case Party: THERACETRAC PETROLEUM INC

Name	BarNumber	Email	TimestampSubmitted	Status
Donna Wojcik		dwojcik@ekvallbyrne.com	7/28/2022 1:42:56 PM	SENT
Sandi Williams		swilliams@ekvallbyrne.com	7/28/2022 1:42:56 PM	SENT
Deanna Ortega		dortega@kvalbyrne.com	7/28/2022 1:42:56 PM	SENT
Ignacio Barbero		ibarbero@ekvallbyrne.com	7/28/2022 1:42:56 PM	SENT

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Donna Wojcik on behalf of Michael A. Hummert

Bar No. 10272000

dwojcik@ekvallbyrne.com

Envelope ID: 66765862

Status as of 7/28/2022 2:21 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
R. JamesAmaro		fax@amarolawfirm.com	7/28/2022 1:42:56 PM	SENT

EXHIBIT E

342-334428-22

FILED
TARRANT COUNTY
7/28/2022 1:42 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 342-334428-22

MARIA ROSARIO POWDRILL	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
RACETRAC PETROLEUM, INC.	§	
	§	
Defendant	§	342ND JUDICIAL DISTRICT

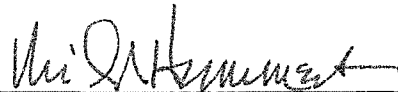
DEFENDANT'S JURY DEMAND

TO THE HONORABLE COURT:

Defendant respectfully demands a trial by jury.

Respectfully submitted,

EKVALL & BYRNE, LLP



Michael A. Hummert
State Bar No. 10272000
mhummert@ekvallbyrne.com
Ignacio Barbero
State Bar No. 00796162
ibarbero@ekvallbyrne.com
4450 Sigma Road, Suite 100
Dallas, Texas 75244
Telephone (972) 239-0839
Facsimile (972) 960-9517

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was e-served on counsel of record herein in accordance with the Rules of Civil Procedure on the 28th day of July, 2022.


MICHAEL A. HUMMERT

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Donna Wojcik on behalf of Michael A. Hummert

Bar No. 10272000

dwojcik@ekvallbyrne.com

Envelope ID: 66765862

Status as of 7/28/2022 2:21 PM CST

Associated Case Party: THERACETRAC PETROLEUM INC

Name	BarNumber	Email	TimestampSubmitted	Status
Donna Wojcik		dwojcik@ekvallbyrne.com	7/28/2022 1:42:56 PM	SENT
Sandi Williams		swilliams@ekvallbyrne.com	7/28/2022 1:42:56 PM	SENT
Deanna Ortega		dortega@kvalbyrne.com	7/28/2022 1:42:56 PM	SENT
Ignacio Barbero		ibarbero@ekvallbyrne.com	7/28/2022 1:42:56 PM	SENT

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Donna Wojcik on behalf of Michael A. Hummert

Bar No. 10272000

dwojcik@ekvallbyrne.com

Envelope ID: 66765862

Status as of 7/28/2022 2:21 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
R. JamesAmaro		fax@amarolawfirm.com	7/28/2022 1:42:56 PM	SENT

EXHIBIT F

342-334428-22

FILED
TARRANT COUNTY
8/3/2022 2:13 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 342-334428-22

MARIA ROSARIO POWDRILL	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
RACETRAC PETROLEUM, INC.	§	
	§	
Defendant	§	342ND JUDICIAL DISTRICT

DEFENDANT'S FIRST AMENDED ANSWER

TO SAID HONORABLE COURT:

RaceTrac Petroleum, Inc. ("RaceTrac"), the Defendant herein, files this, its First Amended Answer to Plaintiff's Original Petition, respectfully showing unto the Court as follows:

GENERAL DENIAL

I.

Subject to such stipulations and admissions as may be hereafter made, Defendant hereby enters a general denial, as is permitted by Rule 92 of the Texas Rules of Civil Procedure.

AFFIRMATIVE DEFENSES

II.

Pleading further, Defendant would show that Plaintiff was guilty of certain acts or omissions of negligence, each of which, separately or concurrently, was the sole proximate cause or, alternatively, a proximate cause of the occurrence made the basis of this suit, including but not limited to failing to keep a proper lookout for her own safety.

III.

Pleading further, and in the alternative, Defendant would show that the occurrence made the basis of this suit was the result of an unavoidable accident; that is, one not proximately caused by the negligence of any party to it.

IV.

Pleading further in the alternative, Defendant would show that the act or omission of a separate and independent agency, not reasonably foreseeable, destroyed the causal connection, if any, between the acts or omissions of Defendant and the occurrence in question, and thereby became the immediate cause of such occurrence and the Plaintiff's claimed injuries and damages.

V.

Pleading further, Defendant would show that, pursuant to Texas Civil Practice and Remedies Code § 41.0105, any claim for medical or healthcare expenses allegedly incurred by Plaintiff is limited to the amount actually paid or incurred by or on behalf of Plaintiff.

VI.

Pleading further, Defendant would show that, pursuant to Texas Civil Practice and Remedies Code § 18.091, evidence of alleged loss of earnings, lost wages, lost earning capacity and/or loss of contributions of a pecuniary value, if any, and to the extent such recovery is sought, must be presented by Plaintiff in the form of net loss after reduction for income tax payments or unpaid tax liability to any federal income tax law.

VII.

While denying that there is any legal or factual basis for Plaintiff's groundless claim for punitive damages, Defendant invokes the procedural safeguards incorporated in Chapter 41 of the Texas Civil Practice & Remedies Code, including the enhanced burden of proof, the requirement of a unanimous jury verdict, the limitation on the amount of punitive damages, and the right to a bifurcated trial

PRAYER

For the above reasons, Defendant prays that upon final hearing judgment be rendered that Plaintiff recover nothing of and from Defendant, and that Defendant recover its costs in this behalf expended; further, that Defendant be granted all such other and further relief to which it may be justly entitled.

Respectfully submitted,

EKVALL & BYRNE, LLP



Michael A. Hummert
State Bar No. 10272000
mhummert@ekvallbyrne.com
Ignacio Barbero
State Bar No. 00796162
ibarbero@ekvallbyrne.com
4450 Sigma Road, Suite 100
Dallas, Texas 75244
Telephone (972) 239-0839
Facsimile (972) 960-9517

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was e-served on counsel of record herein in accordance with the Rules of Civil Procedure on the 3rd day of August, 2022.



MICHAEL A. HUMMERT

Automated Certificate of eService

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Donna Wojcik on behalf of Michael A. Hummert

Bar No. 10272000

dwojcik@ekvallbyrne.com

Envelope ID: 66934015

Status as of 8/3/2022 2:18 PM CST

Associated Case Party: THERACETRAC PETROLEUM INC

Name	BarNumber	Email	TimestampSubmitted	Status
Ignacio Barbero		ibarbero@ekvallbyrne.com	8/3/2022 2:13:54 PM	SENT
Deanna Ortega		dortega@kvalbyrne.com	8/3/2022 2:13:54 PM	SENT
Sandi Williams		swilliams@ekvallbyrne.com	8/3/2022 2:13:54 PM	SENT
Donna Wojcik		dwojcik@ekvallbyrne.com	8/3/2022 2:13:54 PM	SENT

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Donna Wojcik on behalf of Michael A. Hummert

Bar No. 10272000

dwojcik@ekvallbyrne.com

Envelope ID: 66934015

Status as of 8/3/2022 2:18 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
R. JamesAmaro		fax@amarolawfirm.com	8/3/2022 2:13:54 PM	SENT